

JEFF FINE  
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CIVIL NEW COMPLAINT	333.00
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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

Kimberly Spitler, on behalf of herself and  
 all those similarly situated,

Plaintiff,

v.

State of Arizona,

Defendant.

Case No. **CV2019-003542**

**CIVIL COMPLAINT**

**[JURY TRIAL DEMANDED]**

Plaintiff Kimberly Spitler ("Plaintiff"), on behalf of herself and all others similarly  
 situated, alleges the following for her Complaint against the State of Arizona (the "State").

**I. NATURE OF THE CASE**

1. Plaintiff brings this action against the State for unlawful failure to pay wages  
 owed in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*; for  
 unlawful failure to pay wages owed in violation of A.R.S. § 23-391 *et seq.*; for unlawful  
 failure to timely pay all wages due pursuant to A.R.S. § 23-350 *et seq.* (A.R.S. §§ 23-391

1 and 350 collectively referred to as the "Arizona Wage Statute"); and as an alternative  
2 equitable claim, for unjust enrichment pursuant to Arizona law.

3 2. Plaintiff alleges on behalf of herself and all other similarly situated, hourly  
4 case workers of the State's Department of Economic Security, Division of Developmental  
5 Disabilities (the "DDD"), that they are entitled to unpaid wages, including unpaid overtime,  
6 for all hours worked exceeding forty (40) hours in a workweek, statutory damages, and  
7 attorneys' fees and costs.

8 3. For at least three years prior to the filing of this action (the "Liability Period"),  
9 the State has had a consistent policy or practice of suffering or permitting Plaintiff and the  
10 similarly situated case workers to work in excess of forty (40) hours per week without  
11 paying them proper overtime compensation and without timely paying wages due as  
12 required by the FLSA and the Arizona Wage Statute.

13 4. This action is brought as a collective action pursuant to 29 U.S.C. § 216(b) to  
14 recover unpaid overtime compensation, liquidated damages, statutory penalties and  
15 damages owed to Plaintiff and all others similarly situated. This lawsuit is also brought as  
16 a class action under Federal Rule of Civil Procedure 23, to recover unpaid compensation  
17 and treble damages resulting from the State's violations of the Arizona Wage Statute and  
18 for equitable relief under State law. For collective action and class action purposes, the  
19 proposed Class consists of:

20 All current and former case managers or support coordinators employed by  
21 the State at the Department of Economic Security Division of Developmental  
22 Disabilities, regardless of actual title, who were paid an hourly wage during  
the Liability Period (the "Class Members").

23 5. Plaintiff filed a notice of claim pursuant to A.R.S. § 12-821.01 on April 12,  
24 2019.

## 25 II. JURISDICTION AND VENUE

26 6. This court has jurisdiction over the FLSA claims pursuant to 29 U.S.C. §§  
27 203 (c), 207, 216(b), and 29 CFR Part 553, because Arizona has waived its sovereign  
28 immunity and consented to private FLSA actions for money damages in this Court. *See*

1 *Alden v. Maine*, 527 U.S. 706, 755 (1999) (“[State] sovereign immunity bars suits only in  
 2 the absence of consent.”); Ariz. Const. Art. IV, Part 2, Section 18 (“The Legislature shall  
 3 direct by law in what manner and in what courts suits may be brought against the state.”);  
 4 the Actions Against Public Entities or Public Employees Act, 1984 Ariz.Sess.Laws, ch. 285  
 5 (2d Reg. Sess.) (codified at A.R.S. §§ 12-820 to 826) (addressing the circumstances under  
 6 which absolute or qualified immunity applies); *Glazer v. State*, 237 Ariz. 160, 163 (2015)  
 7 (“The Act leaves intact the common-law rule that the government is liable for its tortious  
 8 conduct unless immunity applies”); A.R.S. § 23-391; and A.A.C. R2-5A-404.  
 9 (incorporating by reference FLSA Regulations 29 CFR 553 and 778).

10 7. This court further has jurisdiction over this matter by virtue of Ariz. Const.  
 11 Art. VI, § 14, and A.R.S. § 12-123 and because the amount in controversy in this action  
 12 exceeds the jurisdictional sum. Venue is proper in Maricopa County, Arizona by virtue of  
 13 A.R.S. § 12-401 and Ariz. Const. Art. XIV § 8.

### 14 III. PARTIES

15 8. At all times relevant to the matters alleged herein, Plaintiff resided in the State  
 16 of Arizona in Maricopa County, and the State employed Plaintiff in Maricopa County.

17 9. Plaintiff is a full-time employee of the DDD in Maricopa County and began  
 18 her employment there on August 17, 2017.

19 10. The DDD is an agency of the State and does business in Arizona by providing  
 20 case management services for developmentally disabled members of the Arizona Long  
 21 Term Care System (“ALTCS”).

22 11. The State is an employer within the meaning of the FLSA, 29 U.S.C. § 203  
 23 (d) and the Arizona Wage Statute, A.R.S. § 23-350(3). The State set policy with regard to  
 24 the amount and manner of compensation for Plaintiff and the Class Members. The State  
 25 also carried out the pay policies and payroll practices for Plaintiff and the Class Members’  
 26 compensation including the overtime they were owed.

27 12. Pursuant to 29 U.S.C. § 216(b), attached to and filed with this Complaint as  
 28 Exhibit A, is the Consent to Become Party Plaintiff, signed by the above-named Plaintiff,

1 Kimberly Spitler, opting her into this lawsuit.

2 13. Plaintiff and the other similarly situated Class Members are employees as  
3 defined in 29 U.S.C. § 203(e)(1) and are non-exempt employees under 29 U.S.C. §  
4 213(a)(1) and A.R.S. § 23-350(2).

5 14. At all relevant times, the State was an employer as defined by 29 U.S.C. §  
6 203(d) and A.R.S. § 350(3).

7 15. At all relevant times, DDD has been enterprise to which the FLSA overtime  
8 regulations apply.

9 **IV. COLLECTIVE ACTION ALLEGATIONS**

10 16. Plaintiff brings her claim under the FLSA, 29 U.S.C. § 201 *et seq.*, as a  
11 collective action. Plaintiff brings this action on behalf of herself and others similarly  
12 situated, properly defined in paragraph 4 above.

13 17. The State's illegal overtime wage practices were widespread with respect to  
14 the proposed Class. The failure to pay proper overtime was not the result of random or  
15 isolated individual management decisions or practices.

16 18. The State's overtime wage practices were routine and consistent. Throughout  
17 the Liability Period, Class Members regularly were not paid the proper overtime wages  
18 despite working in excess of forty hours per week.

19 19. Other Class Members performed the same or similar job duties as Plaintiff.  
20 Moreover, these Class Members regularly worked more than forty hours in a workweek.  
21 Accordingly, the employees victimized by the State's unlawful pattern and practices are  
22 similarly situated to Plaintiff in terms of employment and pay provisions.

23 20. The State's failure to pay overtime compensation at the rates required by the  
24 FLSA result from generally applicable policies or practices and do not depend on the  
25 personal circumstances of the members of the collective action. Thus, Plaintiff's experience  
26 is typical of the experience of the Class Members employed by the State.

27 21. All Class Members, including Plaintiff, regardless of their precise job  
28 requirements or rates of pay, are entitled to overtime compensation for hours worked in

1 excess of forty (40). Although the issue of damages may be individual in character, there  
2 is no detraction from the common nucleus of facts pertaining to liability.

3 **V. CLASS ACTION ALLEGATIONS**

4 22. The state law claims under the Arizona Wage Statute and Arizona common  
5 law are brought as a class action under Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2),  
6 and (b)(3). The Class is defined in paragraph 4 above.

7 23. At all relevant times, the State's illegal overtime and wage practices have been  
8 widespread with respect to the proposed Class. The State's failure to pay proper overtime  
9 and failure to timely pay wages due has not been the result of random or isolated individual  
10 management decisions or practices.

11 24. The State's overtime and wage practices have been routine and consistent.  
12 Throughout the past three years, Class Members have regularly not been paid the proper  
13 overtime and timely wages due despite earning such wages.

14 25. The State's failure to pay overtime compensation and timely wages due  
15 results from generally applicable policies and practices and does not depend on the personal  
16 circumstances of individual Class Members. Thus, Plaintiff's experience is typical of the  
17 experience of other Class Members employed by the State.

18 26. All Class Members, including Plaintiff, are entitled to overtime compensation  
19 for hours worked in excess of forty (40) and timely payment of wages due. Although the  
20 issue of damages may be individual in character, there is no detraction from the common  
21 nucleus of facts pertaining to liability.

22 27. The State has employed a large number of case managers for DDD. The  
23 proposed Class Members are so numerous that joinder of all Class Members is  
24 impracticable. Upon information and belief there are several hundred members of the  
25 proposed class. Class Members can readily be identified from business records maintained  
26 by the State.

27 28. Questions of law and fact common to the Class Members predominate over  
28 questions that may affect only individual members because the State has acted on grounds

1 generally applicable to all Class Members. Among the questions of law and fact common  
2 to Plaintiff and the Class Members are:

- 3 a. whether the State employed the Class Members within the meaning of  
4 the FLSA and the Arizona Wage Statute;
- 5 b. whether the State owes the Class Members overtime wages in  
6 exchange for work performed in excess of forty hours per week;
- 7 c. whether the State owes the Class Members wages in exchange for all  
8 work performed for the DDD;
- 9 d. whether the State unlawfully failed to timely pay Class Members  
10 wages for all hours worked;
- 11 e. whether the State is liable for damages under Arizona Wage Statute,  
12 including but not limited to compensatory damages, interest, and treble  
13 damages;
- 14 f. whether the State was unjustly enriched as a result of its wages practices  
15 in violation of Arizona law.

16 29. Plaintiff's claims under Arizona state law are typical of those of the Class  
17 Members, in that class members have been employed in the same or similar positions as  
18 Plaintiff and were subject to the same or similar unlawful pay practices as Plaintiff.

19 30. The common questions set forth above predominate over any questions  
20 affecting only individual persons, and a class action is superior with respect to  
21 considerations of consistency, economy, efficiency, fairness, and equity to other available  
22 methods for the fair and efficient adjudication of the Arizona state law claims.

23 31. A class action is appropriate for the fair and efficient adjudication of this  
24 controversy. The State acted or refused to act on grounds generally applicable to the entire  
25 class. The presentation of separate actions by individual Class Members could create a risk  
26 of inconsistent and varying adjudications, establish incompatible standards of conduct for  
27 the State, and/or substantially impair or impede the ability of the Class Members to protect  
28 their interests. The damages suffered by individual Class Members may be relatively small,



1 and the expense and burden of individual litigation make it virtually impossible for the  
2 members of the class action to individually seek redress for the wrongs done to them.

3 32. Plaintiff will fairly and adequately represent the interests of the Class  
4 Members and has retained counsel that is experienced and competent in the fields of wage  
5 and hour law and class action litigation. Plaintiff has no interest that is contrary to or in  
6 conflict with those members of this class action.

7 33. This action is maintainable as a class action under Rule 23(b)(1) because  
8 prosecution of separate actions by or against individual members of the class would create  
9 risk of: (A) inconsistent or varying adjudications with respect to individual members of the  
10 class which would establish incompatible standards of conduct for the party opposing the  
11 class, or (B) adjudications with respect to individual members of the class which would as  
12 a practical matter be dispositive of the interests of the other members not parties to the  
13 adjudications or substantially impair or impede their ability to protect their interests.

14 34. This action is maintainable as a class action under Rule 23(b)(2) because  
15 the State "has acted or refused to act on grounds generally applicable to the class," thereby  
16 making appropriate final injunctive relief or corresponding declaratory relief with respect  
17 to the class as a whole. Unless an injunction is issued, the State will continue to commit the  
18 violations alleged and the members of the Class and future employees of the State will  
19 continue to be subjected to the State's wrongful practices.

20 35. This action is maintainable as a class action under Rule 23(b)(3) because  
21 questions of law or fact common to the Class predominate over any questions affecting only  
22 individual members.

23 36. In addition, a class action is superior to other available methods for the fair  
24 and efficient adjudication of the controversy. The Arizona Wage Statute recognizes that  
25 employees who are denied their wages often lack the ability to enforce their rights against  
26 employers with far superior resources. Further, because the damages suffered by individual  
27 Class Members may be relatively small, the expense and burden of individual litigation  
28 makes it difficult for members of the Class to individually redress the wrongs done to them.





1 own homes with disaster/emergency plans; for members admitted to nursing facilities,  
2 ensuring and documenting that pre-admission screenings and resident review screenings  
3 have been completed prior to admission; updating the FOCUS System within ten days of  
4 initial visits; conducting ongoing monitoring of the services and placement of each member  
5 assigned to their caseloads in order to assess the continued suitability and cost effectiveness  
6 of the services and placement in meeting members' needs and the quality of care delivered  
7 by members' service providers; attending nursing facility care conferences to discuss  
8 members' needs and services jointly with the members, care providers and the members'  
9 families; attending meetings for any and all home modifications for members' homes; and  
10 attending team meetings for those members who will be released from jail or prison to  
11 ensure they receive a "warm welcome" and a place to reside upon release.

12 44. Plaintiff and the other Class Members were hourly employees eligible for  
13 overtime compensation pursuant to the FLSA; and pursuant to A.R.S. § 23-391, an Arizona  
14 statute that governs overtime for State employees like Plaintiff and the other Class  
15 Members, and follows the principles of the FLSA and incorporated the FLSA regulations  
16 by reference.

17 45. Plaintiff and the Class Members earned an hourly wage, with Plaintiff earning  
18 \$19 per hour for regular hours worked.

19 46. Case managers officially worked five 8-hour shifts or four 10-hour shifts per  
20 week.

21 47. However, during the Liability Period, Plaintiff and the Class Members were  
22 required to work in excess of forty hours per week on their assigned cases in order to remain  
23 in compliance with AHCCCS requirements.

24 48. If the case managers did not complete work on their assigned cases in a timely  
25 manner, they were subject to discipline.

26 49. In addition, if the case managers did not complete their case work in a timely  
27 fashion, their Managing Accountability and Performance ("MAPS") scores would be  
28

1 negatively affected, and their eligibility for a merit increase would be negatively impacted  
2 and opportunities for advancement would be limited.

3       50. The State would pay overtime wages to Plaintiff and the other Class Members  
4 for working on cases not in their regular caseloads when case managers from other units  
5 were unable to stay in compliance, but would only assign the Plaintiff and the other Class  
6 Members those cases if Plaintiff and the other Class Members were up to date on their  
7 regularly assigned cases.

8       51. In order to complete work on their regular cases, Plaintiff and the Class  
9 Members worked 60 to 70 hours per week during a typical week.

10       52. In order to complete their required work, Plaintiff and the other Class  
11 Members would typically go in to work early, leave late, work through their lunch periods  
12 or work from home at night and on weekends.

13       53. During the liability period, Plaintiff's and the Class Members' supervisors  
14 and Area Program Managers were aware that the case managers regularly worked more than  
15 forty hours per week on their regularly assigned caseloads in order to complete their duties  
16 in a timely manner.

17       54. However, the State routinely failed to pay Plaintiff and the Class Members  
18 the proper overtime rate of time and half their regular rate of pay for all overtime hours  
19 worked over forty in a workweek in violation of the FLSA and A.R.S. § 23-391.

20       55. The State's failure to timely pay Plaintiff and the Class Members all the wages  
21 they were due also violates A.R.S. § 23-350 *et seq.*

22       56. The State's failure to pay Plaintiff and the Class Members the wages they had  
23 a reasonable expectation to receive was willful. The State knew that it was required to pay  
24 Plaintiff and the Class Members for all hours worked, including overtime hours, but failed  
25 to do so.

26       57. The total amount of outstanding wages, statutory damages, and statutory fees  
27 and costs due from the State exceeds \$10,000.

28       58. Plaintiff and the Class Members are entitled to have their unpaid wages

1 trebled under Arizona law and are entitled to liquidated damages under the FLSA.

2 **VII. COUNT ONE**

3 **(Failure to Pay Overtime Wages – violation of the Fair Labor**

4 **Standards Act – 29 U.S.C. § 207 *et seq.*)**

5 59. Plaintiff incorporates by reference all of the above allegations as though  
6 fully set forth herein.

7 60. The Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* is a remedial statute  
8 designed to ensure that employees who are “suffered” or “permitted” to work for an  
9 employer are paid overtime wages for all hours worked in excess of 40 hours in individual  
10 work weeks.

11 61. There are no exemptions to the FLSA’s overtime requirements applicable in  
12 this matter.

13 62. Plaintiff is a non-exempt employee entitled to the statutorily mandated  
14 overtime pay according to the FLSA.

15 63. The State is an employer pursuant to 29 U.S.C. § 203(d).

16 64. At all relevant times, Plaintiff and the Class Members regularly worked more  
17 than forty (40) hours per week, but they did not receive overtime pay.

18 65. The State has failed to comply with 29 U.S.C. § 207 because Plaintiff and the  
19 other Class Members worked for the State in excess of forty hours per week, but the State  
20 has failed to pay them for those hours at the statutorily required rate of one and one-half  
21 times Plaintiff’s regular rate of pay as required by the FLSA.

22 66. The State knows, and at all relevant times knew, that Plaintiff and the Class  
23 Members were working overtime but has failed to properly pay overtime wages and has no  
24 reason to believe its failure to pay overtime was not a violation of the FLSA. The State’s  
25 violations of the FLSA are, and at all relevant times were, intentional and willful, and  
26 accordingly, a three-year statute of limitation applies, pursuant to 29 U.S.C. § 255.

27 67. Each improperly paid Class Member who has performed and or continues to  
28 perform services for the State for any time during the three years preceding this lawsuit is

1 entitled to notification of the pendency of this action and of his/her right to consent to  
2 becoming a party to this action. Notice should be sent to all Class Members, as defined  
3 above, pursuant to 29 U.S.C. § 216(b).

4 68. As a result of the State's failure to pay overtime wages, the Plaintiff and all  
5 other Class Members have been damaged and are entitled to recovery of overtime wages,  
6 liquidated damages in an amount equal to the wages they are owed as unpaid overtime,  
7 prejudgment interest, attorneys' fees, costs and other compensation, declaratory and  
8 injunctive relief.

9 **VIII. COUNT TWO**

10 **(Failure to Pay Overtime - Violation of the Arizona Wage Statute,**

11 **A.R.S. § 23-391 *et seq.*)**

12 69. Plaintiff incorporates by reference all of the above allegations as though  
13 fully set forth herein.

14 70. Plaintiff and the Class Members are employees entitled to overtime wages  
15 pursuant to A.R.S. § 23-391.

16 71. The State failed to pay Plaintiff and the Class Members overtime wages they  
17 were entitled to pursuant to A.R.S. § 23-391.

18 **IX. COUNT THREE**

19 **(Failure to Timely Pay All Wages Due - Violation of the**

20 **Arizona Wage Statute, A.R.S. § 23-350 *et seq.*)**

21 72. Plaintiff incorporates by reference all of the above allegations as though fully  
22 set forth herein.

23 73. The State was aware of its obligation to pay timely wages pursuant to A.R.S.  
24 § 23-351.

25 74. The State was aware that, under A.R.S. §§ 23-351 to 353, it was obligated to  
26 pay all wages due to Plaintiff and the other Class Members.

27 75. The State failed to timely pay Plaintiff and the other Class Members wages  
28 they were due without a good faith basis for withholding the wages.

## **(Unjust Enrichment – Arizona Common Law)**

77. Plaintiff incorporates by reference all of the above allegations as though fully set forth herein.

78. The State has been enriched by Plaintiff's and the other Class Members' unpaid overtime work.

79. Plaintiff and the other Class Members have been impoverished by having to work overtime hours without compensation.

80. There is a connection between the State's enrichment and Plaintiff's and the other Class Members' impoverishment.

81. There is no justification for the enrichment and impoverishment.

82. In the absence of a requirement to pay overtime compensation pursuant to the FLSA and/or A.R.S. § 23-391, there is no legal remedy for Plaintiff and the other Class Members.

WHEREFORE, Plaintiff and all similarly situated employees demand judgment against the State and ask the Court to:

- 13 -

- 1 C. Declare that the State has willfully violated and is willfully violating the  
2 FLSA;
- 3 D. Declare that the State has willfully violated and is willfully violating A.R.S.  
4 § 23-391 *et seq.* and A.R.S. 23-350 *et seq.*;
- 5 E. Declare the State has been unjustly enriched;
- 6 F. Certify the state law claims above as a class action pursuant to Rule 23 of the  
7 Arizona Rules of Civil Procedure;
- 8 G. Designate Plaintiff Kimberly Spitler as the Class Representative of the other  
9 Class Members and undersigned counsel as the attorneys representing the  
10 other Class Members;
- 11 H. Award Plaintiff and all similarly situated employees compensatory damages,  
12 including liquidated damages pursuant to 29 U.S.C. § 216(b) and/or treble  
13 damages and statutory penalties pursuant to A.R.S. § 23-355;
- 14 I. Award *quantum meruit* relief;
- 15 J. Award reasonable attorneys' fees pursuant to 29 U.S.C. § 216 and A.R.S. §  
16 12-341.01;
- 17 K. Award pre- and post-judgment interest; and
- 18 L. Award such other monetary, injunctive, equitable, and declaratory relief as  
19 the Court deems just and proper.

20 **XII. JURY DEMAND**

21 Plaintiff, on behalf of herself and the Class Members, demands a jury trial to the  
22 extent authorized by law.

23 DATED this 25<sup>th</sup> day of June 2019.

24 ROBAINA & KRESIN PLLC

25  
26 By 

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